IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.27704 of 1996

Dated: 29-11-2006

Between:

1.Divvela Vasudevarao & another.

..... PETITIONERS

AND

The Municipal Council, Narasaraopet,
Guntur District, rep. by its Commissioner.

.....RESPONDENT

The Hon'ble Sri Justice Nooty Ramamohana Rao

Writ Petition No.27704 of 1996

Order:

This Writ Petition has been instituted by the petitioners seeking a writ of Mandamus directing the respondent-Municipal Council, Narasaraopet, Guntur District, not to demolish the steps constructed to the building bearing No.9-9-10, Arundelpet, Narasaraopet, from the road margin leading to the said building.

The writ petitioners have asserted their title to the premises in question. They allege that they have applied for the building permission firstly by way of conversion of the existing roof of the old building and then, to raise further constructions thereon. It has also been pleaded that the respondent-Municipal Council had prosecuted the petitioners by launching criminal case bearing STC.No.369 of 1996 and that they have paid the fine amount of Rs.2030/- on 24th October, 1996. It is further alleged that not being content, the respondent had launched another round of prosecution by instituting STC.No.436 of 1996 and since the petitioners were sought to be prosecuted repeatedly, they have resisted the prosecution in STC.No.436 of 1996. The petitioners further allege that the officials of the respondent have been threatening to demolish a portion of the three steps constructed by them from the road margin leading to their building and therefore, vexed with the attitude of the respondent, they instituted the above Writ Petition.

The respondent-Municipal Council had filed a detailed counter-affidavit and contested the case. They have specifically pleaded that after obtaining the permission for change of roof in the ground floor of the building *vide* B.A.No.69/96, dated
22-04-96, the writ petitioners constructed the steps by encroaching upon the road margin portion to a width of
3' 6" x 3' and that the road margin belongs to the

Municipality. Therefore, the respondent is entitled to proceed against the petitioners. The counter-affidavit further goes to allege that the petitioners have removed the old structures standing on the site and constructed a shopping complex comprising of cellar, ground floor, first floor and second floor without leaving sufficient open space around the building and without providing sufficient parking place for the shopping complex as required under the master plan including the building regulations. They have also alleged that the petitioners have been put on a series of notices bearing U.C.Nos.54, 57, 67 and 68 of 1996 and since the petitioners have commenced the construction and were further proceeding with the illegal construction, the prosecution has been launched invoking the powers available to them under Section 340 of the A.P. Municipalities Act, 1965. In spite of paying up the fine, the petitioners have not stopped the further illegal constructions. Therefore, they had to once again launch prosecution against the writ petitioners. It was further alleged in the counter-affidavit that a building is entitled to be constructed leaving a minimum distance of 5' open space from the road margin for the purpose of easy passage to and from the building on to the road. Instead of leaving 5' open space, the petitioners have encroached upon the road margin to the extent indicated supra and have constructed the steps therein to provide an approach to the building in question. Ultimately, it was pleaded that the respondent-Municipal Council is justified in its proposed action to demolish the steps, which have been constructed by encroaching upon

the road margin, and that the Writ Petition is liable to be dismissed.

I have heard Sri V.Parabrahma Sastri, the learned Counsel for the writ petitioners and Sri S.Nageswara Reddy, the learned Standing Counsel for the respondent-Municipal Council.

Sri P.Barabrahma Sastri, has pointed out that the construction of steps leading up to a building by utilizing the road margin is not an illegal or impermissible action warranting either prosecution or demolition of such structures. He places reliance, for his contention, on Section 193 of the A.P.Municipalities Act, which reads as under:

> '193. Power to allow certain projections and erections: -
> (1) The Commissioner may grant a licence, subject to such conditions and restrictions as he may think fit, to the owner or occupier of any premises to put up verandahs, balconies, sun-shades, weather-frames and the like, to project over a street, or in streets in which the construction of arcades has been sanctioned by the Commissioner to put up an arcade, or to construct any step or drain-covering necessary for access to the premises.
> (2) The Commissioner may grant a licence subject to such conditions and restrictions as he may think fit, for the temporary erection of pandals and other structures, in street vested in the council or in any other public place, the control of which is vested in the council.
> (3) The Commissioner shall have power to lease road sides and street margins vested in the Council for occupation for a temporary purpose on such terms and conditions and for

such period not exceeding thirty days as the Commissioner may fix.

(4) But neither a licence under sub-section (1) nor a lease under sub-section (3) shall be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such.

(5) The exercise by the Commissioner of the powers under this section shall be in accordance with such rules as the Government may make in this behalf.

(6) On the expiry of any period for which a licence or lease has been granted under this section, the Commissioner may, without notice, cause any projection or construction put up under sub-section (1) or sub-section (2) to be removed, or cause the occupier to be evicted and the cost of so doing shall be recoverable in the manner provided in Section 364 from the person to whom the licence or lease was granted.'

Though the activity permissible has been described as to put up an arcade, or to construct any step or drain-covering necessary for access to the premises, the learned Counsel for the petitioners would urge that construction of steps also is a permissible activity and it is only intended for the purpose of gaining access to the building in question and that is the very purpose for which the road margins have been set apart.

Be that as it may, the issue as to whether the expression "step" also includes its plural or not need not be decided upon at this juncture for the reason that the writ petitioners have not solicited for grant of any such licence or

permission from the local municipality. That issue will have to be necessarily examined by the local municipality from the stand point of view of the density of the road use and as to whether it will cause any hindrance or inconvenience for free flow of the traffic and road users. I, therefore, decline to express any opinion on this issue of the matter, for the writ petitioners have not yet approached the local municipality seeking any such permission and as and when they do approach the local municipality,

I have no doubt, in my mind, that it will be considered and dealt with in accordance with the merits by the local Municipality. But, the principal question that calls for attention in this matter, undoubtedly, centers around the right and obligation of the respondent-Municipality to raise objection for illegal constructions to be carried on by the residents of the Municipality.

Section 189 of the A.P.Municipalities Act specifically prohibits any person from building any wall or erecting any fence or any other obstruction or projection or making any encroachment in or over any street except as provided for in the subsequent provisions of the Act.

Section 190 of the Act makes it clear that all streets which are already vested in or to be vested in or maintained by a Municipal Council, shall be open to all persons.

Section 191 of the Act contained the prohibitive construction activities without obtaining an appropriate permission from the Commissioner and it is extracted below:

'**191 Prohibition and regulation of doors, ground-floor windows and bars opening outwards:-** (1) No door, gate, bar or ground-floor window shall, without a licence from the Commissioner, be hung or placed so as to open outwards upon any street.

(2) The Commissioner may, by notice, require the owner of such door, gate, bar or window to alter it so that no part thereof when open shall project over the street.'

Section 192 of the Act illustrates the encroachments, which are liable to be removed, and the procedure to be followed by the Commissioner for such removal. Section 192 of the Act is reproduced below:

'**Removal of encroachments:-** (1) The Commissioner may cause to be removed or altered—

(a) any projection, encroachment or obstruction (other than a door, or gate or a necessary access thereto, or bar or ground floor windows) situated against, or in front of such premises and in, or over any street;

(b) any article whatsoever, hawked or exposed for sale in a public place or in any public street in contravention of the provisions of this Act, together with any vehicle, package, box or any other thing in or on which such article is placed.

(2) If the owner of occupier of the premises proves that any such projection, encroachment or obstruction under clause (a) of sub-section (1) has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the council shall make reasonable compensation

to every person who suffers damage by the removal or alteration of the same.

(3) No decision made or order passed or proceeding taken by the Commissioner effecting removal of encroachments shall be called in question before a civil court in any suit, application or other proceeding and no injunction shall be granted by any court in respect of any proceeding taken by the Commissioner.'

Section 340 of the Act specifies the penalty for an unlawful construction. For the sake of reference, Section 340 of the Act is extracted hereunder:

'**Penalty for unlawful building:-** If the construction or reconstruction of any building or well—

(a) is commenced without the permission of the Commissioner, or

(b) is carried on or completed otherwise than in accordance with the particulars on which such permission was based, or

(c) is carried on or completed in contravention of any lawful order or in breach of any provision contained in this Act or in any rule or bye-law made thereunder or of any direction or requisition lawfully given or made, or

if any alterations or additions required by any notice issued under Section 217 or Section 228 are not duly made, or if any person to whom a direction is given under Section 228 to alter or demolish a building or well fails to obey such direction, the owner of the building or well or the said person, as the case may be, shall be liable on conviction to a fine which may extent in the case of a building to five hundred rupees subject to a minimum of fifty rupees and in the case of a well or hut to fifty rupees, subject to a minimum of ten rupees and to a further fine which may extent in the case of a building to one hundred rupees subject to a minimum of ten

> rupees and in the case of a well or hut to ten rupees subject to a minimum of two rupees, for each day during which the offence is proved to have continued after the first day.'

Thus, ample discretion has been conferred by the statute on the Commissioner as well as the local municipality to consider the nature of the construction that has been made and its effect on the social well-being of the residents of the said Municipality. Therefore, when the provisions under Sections 189 to 193 are read with Section 340 of the Act, adequate powers have been vested with the local Municipality to prevent any such construction being made in contravention of any lawful order or in breach of any provision contained in the Act, Rules or Law made thereunder.

It is, therefore, difficult to find fault with the respondent-Municipality to have initiated action against the petitioners for their encroaching upon the road margin and constructing the steps for providing necessary access to the shopping complex constructed by them. Therefore, no writ as prayed for in its terms can be granted. However, before any action is initiated, the local municipality is required under law to serve a notice and provide an opportunity to remedy or rectify the illegality committed by any building owner in constructing the said building. The respondent has specifically asserted in the counter-affidavit that on four different occasions, they had put the writ petitioners on notice. Since, I do not have the benefit of noticing the contents of the said notice to know as to whether they were

directed against the writ petitioners from proceeding further with the constructions contrary to the building permission, or they were specifically directed for the purpose of removal of the steps, which have been got constructed in the road margin, I consider it appropriate that the local municipality, if it comes to any conclusion that the steps constructed by the writ petitioners to gain access to their building are encroaching upon the road margin, which undoubtedly belongs to the Municipality, may proceed against them by providing an opportunity and reasonable time to the writ petitioners to remedy the situation.

With these observations, the Writ Petition stands disposed of. Interim order passed by this Court on 26-12-1996 stands dissolved. There shall be no order as to costs.

(Nooty Ramamohana Rao, J)

29th November, 2006

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